

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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SEP 29 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of)

GAF BROADCASTING COMPANY, INC.)

File No. BRH-910201WL

For Renewal of License for FM)
Radio Station WNCN, New York, NY)

To: The Commission

COMMENTS ON JOINT REQUEST FOR APPROVAL
OF SETTLEMENT AGREEMENT

Class Entertainment and Communications, L.P. (Class), by its attorneys, now comments upon the "Joint Request For Approval Of Settlement Agreement" filed by GAF Broadcasting Company, Inc. (GAF) and The New York State Conference of Branches of the NAACP (NAACP) on August 14, 1992.

Class notes that no officer of the NAACP has signed the agreement and strongly objects to the assertion that the agreement "fully resolves" the NAACP's petition to deny concerning GAF's EEO record. The Commission must closely evaluate GAF's EEO record in light of the allegations in the NAACP petition and other available evidence. Class also strongly objects to any suggestion that GAF has the right to make an ex parte presentation to the Commission concerning its

Pegram Harrison, 4 FCC Rcd 8255, 67 RR 2d 270 (1989). Indeed, in Dixie Broadcasting, the Commission designated a renewal application for hearing because the licensee had failed to comply with the Commission's EEO rule and had made false statements concerning its EEO program. This action was taken despite the approval of a settlement agreement between the licensee and one petitioner and a ruling that the other petitioner lacked standing to file a petition to deny. In Pegram Harrison, an \$18,000 forfeiture was assessed against a station for EEO violations despite the withdrawal of the only petition to deny filed against the station. In this case, GAF's EEO record is also the subject of a petition to deny

qualifications issue against the licensee's renewal application. The NAACP's petition raised serious questions concerning GAF's compliance with the Commission's EEO rules and policies. Even if the Commission determines that a basic qualifications issue shall not be specified against GAF, it should authorize inquiry into GAF's EEO record under the renewal expectancy element of the standard comparative issue. "In contemplating whether an incumbent licensee is entitled to a renewal expectancy, the Commission routinely checks to determine whether there has been full compliance with Commission Rules and Regulations." Seattle Public Schools, 4 FCC Rcd 625, 636, 65 RR 2d 1621, 1639 (Rev. Bd. 1989). Given the deficiencies in GAF's EEO record demonstrated by the Guild and the NAACP, further inquiry is necessary. Indeed, GAF's 1991 Annual Employment Report (attached to these comments) demonstrates that GAF had two fewer minority employees than in 1990 (the last year considered by the NAACP) and only three out of twenty-five employees in the top four categories were minorities. The Commission must fully evaluate GAF's EEO record and either specify appropriate qualifications issues or authorize further inquiry under the standard comparative issue, as appropriate.

In Section 2.4 of the settlement agreement, the NAACP purports to "waive its right to be present during any ex parte presentation to the FCC" by GAF to approve the settlement. Class must point out that any ex parte presentation by GAF is prohibited by the Commission's ex parte rules. This proceeding is restricted because mutually exclusive

applications and petitions to deny have been filed against GAF's renewal application. See Section 1.1208(c)(1)(i) of the Commission's rules. The NAACP and GAF may not unilaterally waive the ex parte rules to the detriment of Class and the other parties opposing GAF. Any attempt by GAF to make an ex parte presentation should be rejected and should result in the specification of a basic qualifications issue against it

BROADCAST STATION
ANNUAL EMPLOYMENT REPORT 1991

Approved by OMB
3080-0390
Expires 9/30/93

(For FCC Use Only)

Code No.

08241

SECTION I

A. Name of Licensee or Permittee GAF Broadcasting Company, Inc.	B. Address 1180 Avenue of the Americas New York, NY 10036
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SECTION II

A. TYPE OF RESPONDENT (check ONLY one)

COMMERCIAL BROADCAST STATION		NONCOMMERCIAL BROADCAST STATION		HEADQUARTERS
AM <input type="checkbox"/> AM	TV <input type="checkbox"/> TV	ER <input type="checkbox"/> Educational AM or FM Radio	HQ <input type="checkbox"/>	
FM <input checked="" type="checkbox"/> FM	LP <input type="checkbox"/> Low Power TV	ET <input type="checkbox"/> Educational TV		
AF <input type="checkbox"/> Combined AM & FM in same area (must file a combined report)	IN <input type="checkbox"/> International			

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B. List call letters and location(s) of included stations. AM station is to be listed first in a combined report. List call letters for each station if changed since last 395-B report.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CURRENT CALL LETTERS	LOCATION(S)	FORMER CALL LETTERS
WNCN - FM	1180 Avenue of the Americas New York, NY 10036	

SECTION III

A. PAY PERIOD COVERED BY THIS REPORT (DATE)

3/31/91

E. CHECK APPLICABLE BOX

- ☐ Fewer than five full-time employees during the selected payroll period (Complete page one only and certification statement and return to FCC)
- ☒ Five or more full-time employees during selected payroll period (Complete all sections of form and certification statement and return to FCC)

SECTION IV CERTIFICATION

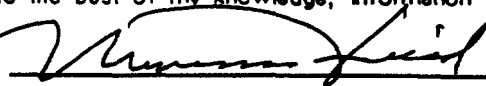
This report must be certified, as follows: (a) By licensee, if an individual; (b) By a partner, if a partnership (general partner, if a limited partnership); (c) By an officer, if a corporation or an association; or (d) By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT.

U.S. CODE, TITLE 18, SECTION 1001.

I certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed



Title

Senior VP & General Manager

Print Name

Matthew Field

Date

4/18/91

Telephone No.

(212) 730-9626

SECTION V - EMPLOYEE DATA

A. FULL-TIME PAID EMPLOYEE DATA

JOB CATEGORIES	TOTAL (a-j)	MALE					FEMALE				
		WHITE (NOT HISPANIC) (a)	BLACK (NOT HISPANIC) (b)	HISPANIC (c)	ASIAN OR PACIFIC ISLANDER (d)	AMERICAN INDIAN, ALASKAN NATIVE (e)	WHITE (NOT HISPANIC) (f)	BLACK (NOT HISPANIC) (g)	HISPANIC (h)	ASIAN OR PACIFIC ISLANDER (i)	AMERICAN INDIAN, ALASKAN NATIVE (j)
OFFICIALS & MANAGERS	4	2	1				1				
PROFESSIONALS	12	6				1	4			1	
TECHNICIANS	1	1									
SALES WORKERS	8	2					6				
OFFICE & CLERICAL	3			1				1	1		
CRAFT WORKERS (SKILLED)											
OPERATIVES (SEMI-SKILLED)											
LABORERS (UNSKILLED)											
SERVICE WORKERS											
TOTAL	28	11	1	1		1	11	1	1	1	

B. PART-TIME PAID EMPLOYEE DATA

JOB CATEGORIES	TOTAL (a-j)	MALE					FEMALE				
		WHITE (NOT HISPANIC) (a)	BLACK (NOT HISPANIC) (b)	HISPANIC (c)	ASIAN OR PACIFIC ISLANDER (d)	AMERICAN INDIAN, ALASKAN NATIVE (e)	WHITE (NOT HISPANIC) (f)	BLACK (NOT HISPANIC) (g)	HISPANIC (h)	ASIAN OR PACIFIC ISLANDER (i)	AMERICAN INDIAN, ALASKAN NATIVE (j)
OFFICIALS & MANAGERS											
PROFESSIONALS	6	3					3				
TECHNICIANS											
SALES WORKERS											
OFFICE & CLERICAL											
CRAFT WORKERS (SKILLED)											
OPERATIVES (SEMI-SKILLED)											
LABORERS (UNSKILLED)											
SERVICE WORKERS											
TOTAL	6	3					3				

CERTIFICATE OF SERVICE

I, Brenda E. Domyan, do hereby certify that on the 29th day of September 1992, a copy of the foregoing "Comments On Joint Request Of Approval Of Settlement Agreement" was sent first-class mail, postage prepaid to the following:

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Crowell & Moring
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Brenda E. Domyan